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October 3, 2014

Hon. Andrew J. Peck
United States Magistrate Judge, Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: *Rio Tinto v. Vale et al*, Civil Action No. 14-cv-3042 (RMB) (S.D.N.Y.)

Dear Judge Peck:

Pursuant to Your Honor's September 8, 2014 Order, we write jointly on behalf of the parties to update the Court on the status of discovery in advance of our October 7, 2014 hearing. The parties have met and conferred telephonically on several occasions, and believe we are making progress toward resolving some of the objections and responses to certain of Rio Tinto's requests. While the meet and confer process (which is not yet complete as to any defendant) has so far been productive, there likely will be some disputes requiring the Court's assistance. At this time, however, the parties are continuing to work to narrow those disputes and thus do not believe any of them are currently ripe.

I. Summary of Discovery to Date

Rio Tinto served its First Request for Production of Documents and First Set of Interrogatories on defendants Vale S.A. ("Vale"), BSG Resources Ltd. ("BSGR"), Benjamin Steinmetz, and Mahmoud Thiam on June 30, 2014. Defendants Steinmetz and BSGR were subsequently served with jurisdictional discovery requests on August 5, 2014 in accordance with the Court's July 29, 2014 Order ("July 29 Order"). Defendants responded to Rio Tinto's written discovery on September 3, 2014.¹

¹ In accordance with the July 29 Order that Rio Tinto's discovery propounded upon Defendants Steinmetz and BSGR be limited to jurisdiction only, they do not intend to respond to Rio Tinto's first set of discovery requests served on June 30, 2014.

Without prejudice to its position that discovery should be stayed, Defendant Vale also served Rio Tinto with its First Request for Production of Documents and First Set of Interrogatories on September 3, 2014. Rio Tinto requested, and Vale agreed to, a one-week extension on its responses and objections to Vale's requests. Consequently, Rio Tinto's objections and responses to Vale's discovery requests are due on October 13, 2014. The parties will begin to meet and confer regarding Rio Tinto's objections and responses thereafter.

II. The Meet and Confer Process

The parties are working to complete the meet and confer process before seeking the Court's assistance.

- *Vale:* Counsel for Rio Tinto and Vale met and conferred on September 4, 2014, September 24, 2014 and September 30, 2014, with each session lasting an hour or more. The parties have scheduled another meet and confer for October 6, 2014, where we expect to discuss the remaining issues.
- *BSGR and Mr. Steinmetz:* Counsel for Rio Tinto and BSGR and Mr. Steinmetz conducted a preliminary call regarding the meet and confer process on September 18, 2014 followed, by a full meet and confer session on September 23, 2014. Counsel for Rio Tinto summarized the parties' discussions and provided further detail and explanation concerning Rio Tinto's position on certain jurisdictional discovery requests, by letter dated October 1, 2014. BSGR and Mr. Steinmetz intend to respond to Rio Tinto's letter in a timely manner. The parties will meet and confer on any remaining issues.
- *Mr. Thiam:* Counsel for Rio Tinto and Mr. Thiam met and conferred regarding Rio Tinto's requests for production on September 23, 2014. Counsel for Rio Tinto summarized the parties' discussions and the positions taken by Mr. Thiam in response to each request, by letter dated October 1, 2014. The parties are scheduling an additional meet and confer to work toward the resolution of any outstanding areas of disagreement.

III. Further Discovery Issues The Parties Will Continue To Address

Defendants intend to file a motion for a stay of discovery on October 6, 2014, seeking a stay at least until disposition of their now fully briefed *forum non conveniens* motion. Rio Tinto will oppose that motion as anticipated by the briefing schedule agreed to on September 8, 2014. *See* Minute Entry dated Sept. 8, 2014. Unless discovery is stayed or absent court order otherwise, however, all parties will continue to meet and confer in good faith to discuss and resolve, to the greatest extent possible, the following unresolved issues:

- *Remaining Objections and Responses to Rio Tinto's Discovery Requests.* As discussed above, the parties will continue to meet and confer to reach a resolution on as many discovery requests as possible. It is unlikely that we will be able to resolve all issues without the Court's involvement, particularly with regard to the scope of discovery

permitted by Fed. R. Civ. P. 26(b)(1). However, the parties will meet and confer to further narrow and refine our disagreement on these issues before seeking the Court's intervention.

- *Responses and Objections to Vale's Discovery Requests to Rio Tinto.* Rio Tinto will respond to Vale's discovery requests, and Vale and Rio Tinto will meet and confer on those responses and objections.
- *Exchange of Custodian Lists.* In accordance with the ESI Protocol entered by the Court (Dkt. No. 82), after the parties have concluded their meet and confer regarding the scope of the individual document requests, they intend to meet and confer to reach agreement regarding a list of appropriate custodians whose documents should be searched.
- *Culling Criteria.* Similarly, after the parties have concluded their meet and confer regarding the scope of the individual document requests, they will begin to discuss the methodology for culling, including the use of predictive coding, search terms, date filters, or other culling criteria for searching and identifying responsive documents.
- *Production Schedule.* As indicated above, the parties are in the process of meeting and conferring to resolve their discovery disputes and, will attempt to reach a mutually agreed upon document production schedule.

The parties will continue to keep the Court informed of their progress as the meet and confer process advances.

Respectfully submitted,

/s/ Michael J. Lyle
Michael J. Lyle

cc: All Counsel of Record (by ECF)